

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHER DIVISION

KEVIN ANDREWS,

Plaintiff,

Case No: 08-CV-12296-DT

v.

HONORABLE DENISE PAGE HOOD

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**ORDER ACCEPTING THE MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**  
**and**  
**ORDER REMANDING AND CLOSING THE CASE**

This matter is before the Court on Magistrate Judge Virginia M. Morgan's Report and Recommendation filed February 5, 2009. To date, no Objections have been filed to the Report and Recommendation.

Judicial review of the Commissioner's decision is limited in scope to determining whether the findings of fact made by the Commissioner are supported by substantial evidence, and deciding whether the Commissioner employed the proper legal criteria in reaching his conclusion. *Garner v. Heckler*, 745 F.2d 383 (6th Cir. 1984). The credibility findings of an administrative law judge ("ALJ") must not be discarded lightly and should be accorded great deference. *Hardaway v. Secretary of Health and Human Services*, 823 F.2d 922, 928 (6th Cir. 1987). A district court's review of an ALJ's decision is not a *de novo* review. The district court may not resolve conflicts in the evidence nor decide questions of credibility. *Garner*, 745 F.2d at 397. The decision of the Commissioner must be upheld if supported by substantial evidence, even if the record might support

a contrary decision. *Smith v. Secretary of HHS*, 893 F.2d 106, 108 (6th Cir. 1989). An administrative decision must be affirmed if supported by substantial evidence, even if the Court might arrive at a different conclusion. *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986) (quoting *Baker v. Heckler*, 730 F.2d 1147, 1140 (8th Cir. 1984)).

The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusion for the proper reasons. The Court agrees with the Magistrate Judge that the Commissioner's burden is not met because no vocational expert testified at the hearing and the record does not support a conclusion that Plaintiff's pain is insignificant. The Court also agrees with the Magistrate Judge that the ALJ improperly relied on the "Grid" to support a finding of no disability. The Court further agrees with the Magistrate Judge that this case should be remanded under Sentence Four of 42 U.S.C. § 403(g) for a meaningful review.

Accordingly,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge Morgan filed February 5, 2009 (**Doc. No. 12**) is ACCEPTED and ADOPTED as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (**Doc. No. 10, filed September 17, 2008**) is GRANTED IN PART and DENIED IN PART without prejudice.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment (**Doc. No. 11, filed October 20, 2008**) is DENIED.

IT IS FURTHER ORDERED that this matter is REMANDED back to the Commissioner under 42 U.S.C. § 405(g), sentence four, as provided in this Order and in the Report and Recommendation.

IT IS FURTHER ORDERED that this matter is CLOSED and a separate judgment is entered.

S/Denise Page Hood  
Denise Page Hood  
United States District Judge

Dated: May 27, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 27, 2009, by electronic and/or ordinary mail.

S/William F. Lewis  
Case Manager